

MELINDA HAAG (CABN 132612)
United States Attorney

MIRANDA KANE (CABN 150630)
Chief, Criminal Division

SUSAN E. BADGER (CSBN 124365)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7199
Facsimile: (415) 436-7234
Susan.Badger@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANNY HARRIS, JR., and
RAYMOND THOMAS, JR.

Defendants.

No. CR 11 0497 CW

GOVERNMENT'S *EX PARTE*
MOTION FOR ORDER
AUTHORIZING PRODUCTION OF
RULE 17(c) MATERIALS IN
ADVANCE OF TRIAL AND
(~~PROPOSED~~) ORDER

INTRODUCTION

Pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure and Rule 17-2 of the Criminal Local Rules, United States District Court, Northern District of California, the United States brings the following *ex parte* motion for an order authorizing the government to issue a Rule 17(c) subpoena to Wells Fargo Bank for certain financial transaction records which will require production of the records in advance of trial. The

GOVT'S *EX PARTE* MOT. FOR ORDER
AND ~~PROP.~~ ORDER AUTHORIZING
PRODUCTION OF RULE 17(c) MATERIALS
IN ADVANCE OF TRIAL
CR 11 0497 CW

1 government will, upon filing of this motion and proposed order, provide the defendants
 2 with a copy of this motion and proposed order, as well as the Declaration of Susan
 3 Badger filed in support of this motion.

4 DISCUSSION

5 Trial in the instant case is scheduled to begin on March 26, 2012 before this Court.
 6 Counts One through Four, which name only defendant Harris, center on allegations that
 7 Harris made material false statements on certain ATF forms when he purchased three
 8 firearms at LC Action, a federal firearms dealer in San Jose. Counts Five and Six charge
 9 both Harris and co-defendant Thomas with conspiracy to tamper with witnesses and
 10 obstruct justice. In connection with the gun purchase alleged in Count Four and certain
 11 acts that Harris and Thomas undertook in connection with the conspiracies alleged in
 12 Counts Five and Six, certain purchase transactions are relevant in that they establish that
 13 Harris and Thomas made those purchases. These facts are more fully explained in the
 14 Government's Motion for Order Authorizing Production of Rule 17(c) Materials in
 15 Advance of Trial and (Proposed) Order, authorized by this Court on October 13, 2011,
 16 Docket Entry 18. *See*, Exhibit A, attached.

17 In that motion, the government explained that it intended to issue a trial subpoena
 18 to Bank of America for copies of records pertaining to credit card transactions that are
 19 relevant to the charges. The government sought the Court's authorization to require Bank
 20 of America to produce the responsive records in advance of trial. Neither defendant
 21 opposed the government's motion.

22 The government issued the trial subpoena to Bank of America and Bank of
 23 America responded that it did not possess records responsive to the subpoena. *See*,
 24 Declaration of Susan Badger in Support of Government's *Ex Parte* Motion for Order
 25 Authorizing Production of Rule 17(c) Materials in Advance of Trial, filed February 6,
 26 2012, ¶¶ 3, 5. The government has conducted additional investigation, and it appears that

27 GOVT'S *EX PARTE* MOT. FOR ORDER
 28 AND ~~PROP.~~ ORDER AUTHORIZING
 PRODUCTION OF RULE 17(c) MATERIALS
 IN ADVANCE OF TRIAL
 CR 11 0497 CW

Wells Fargo Bank is the merchant bank which handled the relevant merchant transactions. *Id.*, ¶ 6. Therefore, the government will be issuing a new trial subpoena to Wells Fargo Bank. In order to obtain relevant records, have time to review them, and provide them to defense counsel, the government seeks authorization from this Court, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure and Criminal Local Rule 17-2(a), permitting issuance of a subpoena to Wells Fargo Bank that will require Wells Fargo Bank to provide the responsive records in advance of trial. *Id.*, ¶ 6. The government will comply with subsections (b), (c), (d), and (f) of Criminal Local Rule 17-2 in issuing the subpoena, and upon production, will promptly provide the documents to defense counsel.¹ *Id.*

Dated: February 6, 2012

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/

SUSAN E. BADGER
Assistant United States Attorney

ORDER

Upon the motion of the government, and good cause appearing, IT IS HEREBY ORDERED THAT the United States is authorized to issue a Rule 17(c) subpoena to Wells Fargo Bank for documents and records which will require production of materials responsive to the Rule 17(c) subpoena in advance of trial. IT IS FURTHER ORDERED

¹ Criminal Local Rule 17(e), which pertains to subpoenas for personnel or complaint records from law enforcement agencies, is not relevant here.

1 that Wells Fargo Bank may deliver the records directly to the United States, as directed on
2 the face of the subpoena. IT IS FURTHER ORDERED that the government provide all
3 records received to defense counsel immediately upon receipt.

4
5 IT IS SO ORDERED.

6
7 Dated: February 21, 2012

8 
CLAUDIA WILKEN
United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 GOVT'S *EX PARTE* MOT. FOR ORDER
28 AND ~~PROP.~~ ORDER AUTHORIZING
PRODUCTION OF RULE 17(c) MATERIALS
IN ADVANCE OF TRIAL
CR 11 0497 CW